IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.529/2000

Panna Ram

Versus

Chandrabhan & Ors.

DATE OF ORDER :: 17/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mrs. Gayatri Rathore, for petitioner
Mr. Manoj Sharma, for respondents

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Instant petition is directed against the order dated 24th August, 1999 whereby learned Executive Magistrate while exercising his power u/ss.145, 146 Cr.P.C. on the date of filing of application by respondents after recording satisfaction about breach of peace with regard to disputed land, passed order for attachment and Receiver was appointed u/s.146 Cr.P.C. and called upon petitioner to appear so that the dispute could be resolved.

It appears that petitioner after putting appearance before learned Magistrate, filed revision petition, which was dismissed on 16th June, 2000. The only fact was examined by learned Magistrate and so also by Court of Revision about prima facie opinion which the authority expressed about disturbance of breach of peace and certainly, these proceedings being interim measure neither decide the right title nor

possession of the parties in dispute. It has come on record that respondents filed revenue suit for declaration along with application for interim injunction filed u/s.212 of Rajasthan Tenancy Act. It has also come on record that the petitioner and respondents belong to same family, but with regard to the dispute in respect of land in question, a criminal case was also instituted u/ss. 147, 148, 149, 323, 379 & 302 IPC.

After going through the order impugned, this Court is of the opinion that the learned Magistrate after recording his satisfaction on the basis of complaint and so also of the report which he received from the concerned SHO, expressed his prima facie opinion so that breach of peace may not be disturbed and the petitioner at this stage has a right to submit reply before the concerned authority so that the matter could have been adjudicated. Even when this petition was filed, only the stay granted by this court was to keep the further proceedings of learned trial Judge stayed. As such the order passed by the learned Magistrate which is impugned in the instant petition remained operative.

Counsel for parties are not aware of final decision in the revenue suit filed which alone will decide their inter se rights finally. This court is of the opinion that under the order impugned only interim arrangement was made which

gives liberty to petitioner to file reply and the same could be considered by learned Magistrate under the procedure provided u/ss.145 & 146 Cr.P.C.

This court does not find any error in the order impugned and considers proper that both the parties may appear before the concerned Executive Magistrate on 24th September, 2007 and it is expected that after taking their reply and objections, if any, he may pass appropriate necessary orders within three months thereafter.

With the above observations, the misc. petition stands disposed of. Record be sent back to trial court forthwith.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.